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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,611	12/29/2000	Steven E. Barile	42390P9914	1292

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EXAMINER	
GRAHAM, ANDREW R	

ART UNIT	PAPER NUMBER
2644	

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/752,611	**Applicant(s)** BARILE, STEVEN E.	
	Examiner Andrew Graham	**Art Unit** 2644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: please see continuation sheet(s).
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

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571-272-7517

Response to Arguments

Applicant's arguments filed 7/15/2005 have been fully considered but they are not persuasive.

On page 6, lines 17-18, the applicant has stated, "Applicant hereby re-asserts all arguments set forth in the response filed 11 November, 2004". In response, these arguments have been reviewed and the responses to these arguments presented in the final office action of 5/19/05 are also hereby re-asserted.

On page 6, lines 23-25, the applicant has stated, "Applicant points out that Claim 1 specifically recites "concatenating at least a portion of an audio format of the descriptive information to the audio file". Similarly, the applicant has stated on page 7, lines 6-7, "Applicant notes that the element of Claims 1 and 11 have been mis-quoted on page 9 of the Office Action" in relation to the use of the word "an" in the "does not clearly specify" subportion of the final office action. The examiner respectfully submits that this reference to the claimed matter was not intended, nor required to be, an exact quotation of the pertinent claim language. The exact claim language of to "the audio file" is clearly cited, using quotation marks, in regards to the teachings of Fitzpatrick when considered in view of Sato, on page 10 of the previous and final office action. The use of the word "an" in the phrase "to an audio file" reflects reference in this particular subsection to a general concept not taught by Sato that would at least include the contextually more specific "to the audio file" delimited in the pertinent claim language of Claims 1 and

11. Again, this claim language, "to the audio file" is clearly quoted in the final office action on page 10.

On page 7, lines 13-15, the applicant has stated, "neither Sato nor Fitzpatrick, either alone or in combination, suggests concatenation to an original file that is an audio file" in particular context of the teachings of Fitzpatrick. The examiner respectfully disagrees. The combining of Fitzpatrick, as cited by the applicant on page 2, lines 11-12 of the previous response to arguments, meets the interpreted scope of the limitations of the pertinent claim language, which in Claims 1 and 11 is "concatenating … to the audio file". It is well-established that Office personnel must rely on the applicant's disclosure to properly determine the meaning of the claims. Based on the applicant's disclosure, "concatenating … to the audio file" in terms of the actual handling of data has been interpreted to mean that the original audio file's audio data is concatenated with digitally formatted audio data representing the meta-data or title, based on, for example, page 6, lines 15-19 or page 7, lines 18-20. This process is described as creating a new audio file (136) (page 7, lines 18-20). Description otherwise, such as concatenation without making a new audio file, is not included in the application. The system of Fitzpatrick teaches the sequential writing of digitized audio to the output file (step 260, col. 4, lines 1-2). This step, 260, applies to all human discernable entities, which includes audio data as well as text that can be converted to spoken words or phrases (col. 3, lines 57-61). Accordingly, Fitzpatrick is considered to teach

"concatenating at least a portion of an audio format of the descriptive information to the audio file" when considered in view of the teachings of Sato, wherein the "text" of Fitzpatrick corresponds to the title data of Sato. Again, such interpretation of the pertinent claim language is based on the applicant's specification.

On page 7, lines 19-23, the applicant has stated, "The Final Office Action states that, because one can go from beginning to end of the flowchart shown in Fig. 2 of Fitzpatrick without traversing blocks 320 - 380, Fitzpatrick discloses processing for an audio-only file". The examiner respectfully submits that, as long as the phrase "audio-only file" in this statement is construed or intended to be construed as comprising the music data of Sato, such as the music data recorded in the MP3 or MD method (para. 0052), this statement is correct. This music data of Sato clearly comprises audio data as well as text, as is evidenced by Figures 9 and 11. Reference to such audio and text information or entities was made along with the response pertinent to the above citation, as can be seen in the paragraph that begins on page 3 of the final office action, mailed 5/19/05. However, this does not appear to be definition afforded to such a phrase by the applicant, as that applicant has further stated on page 7, lines 22-24, "However, such is not the case. One cannot traverse from beginning to end of the flowchart in Fig. 2 without executing block 225". First, it is respectfully noted that neither block 225, nor 270 fall between blocks 320 and 380 in Figure 2 of Fitzpatrick. Further, as denoted above, these blocks of 225, 250, and 270 were referred to and

relied upon for at least their teachings regarding audio and text, as evidenced by the paragraph that begins on page 3 and ends on page 4 of the final office action, as well as the reference to "the effective signal composition of Sato" which, when output through the speakers, comprises both audio as well as synthesized text.

On page 8, lines 5-10, the applicant has stated, "Generating an 'intermediate audio output file', which is how the Final Office Action characterizes Fitzpatrick, does not satisfy the burden of showing a prima facie case of obviousness with respect to mixing 'with the audio file' nor 'generating a new audio file containing audio data resulting from the mixing'" and "Sato also fails to suggest or disclose 'generating a new audio file'". The examiner respectfully submits that these arguments fail to address the collective teachings of Sato and Fitzpatrick. It is well-established that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. The applicant's specification describes mixing "with the audio file" as involving the mixing of synthesized audio title data with the audio content of the audio file (page 7, line 28 - page 8, line 4). Sato discloses mixing an audio signal (para. 0070-0072). Fitzpatrick teaches the handling of digital audio signals to form an intermediate output file (col. 4, lines 1-2 and 65-67; col. 5, lines 1-3). Combining these teachings, mixing the audio signals to form a digital output file, reads on "mixing an audio format of at least a portion of the descriptive information with the signal" as claimed. The construction of an

output file in Fitzpatrick equates to "generating a new file containing the audio data resulting from the mixing", again noting that such a limitation was rejected in view of the teachings of Sato and Fitzpatrick, not Sato alone.

On page 8, lines 14-15, the applicant has stated, "Claim 16 is allowable at least because the Office Action has failed to address each and every element of Claim 16 in its rejection". The examiner respectfully disagrees. Reference in the final office action mailed 5/19/05 is made to Figure 2 of Sato, which shows a computer system comprising the claimed limitations of a processor and a media (page 20, 2nd paragraph of final rejection mailed 5/19/05). Paragraph 108 is also referenced, which provides further details regarding the computer readable medium of Sato.

It is further noted that the after final response of 7/15/2005 includes a typographical error in the signature "/s/". However, as the signer is identifiable, the signature has been accepted under 37 CFR 1.4.

ag

August 1, 2005